

## **FIRST DIVISION**

**[ G.R. No. 196047, January 15, 2014 ]**

**LEPANTO CONSOLIDATED MINING CORPORATION, PETITIONER,  
VS. BELIO ICAO, RESPONDENT.**

### **D E C I S I O N**

**SERENO, C.J.:**

This Petition under Rule 45 of the Rules of Court seeks to annul and set aside the Court of Appeals (CA) Decision dated 27 September 2010 and the Resolution dated 11 March 2011 in CA-G.R. SP. No. 113095.<sup>[1]</sup> In the assailed Decision and Resolution, the CA upheld the Order of the National Labor and Relations Commission (NLRC) First Division dismissing petitioner's appeal for allegedly failing to post an appeal bond as required by the Labor Code. Petitioner had instead filed a motion to release the cash bond it posted in another NLRC case which had been decided with finality in its favor with a view to applying the bond to the appealed case before the NLRC First Division. Hence, the Court is now asked to rule whether petitioner had complied with the appeal bond requirement. If it had, its appeal before the NLRC First Division should be reinstated.

### **THE FACTS**

We quote the CA's narration of facts as follows:

The instant petition stemmed from a complaint for illegal dismissal and damages filed by private respondent Belio C. Icao [Icao] against petitioners Lepanto Consolidated Mining Company (LCMC) and its Chief Executive Officer [CEO] Felipe U. Yap [Yap] before the Arbitration Branch of the NLRC.

Private respondent essentially alleged in his complaint that he was an employee of petitioner LCMC assigned as a lead miner in its underground mine in Paco, Mankayan, Benguet. On January 4, 2008, private respondent reported for the 1st shift of work (11:00 p.m. to 7:00 a.m.) and was assigned at 248-8M2, 750 Level of the mining area. At their workplace, private respondent did some barring down, installed five (5) rock bolt support, and drilled eight (8) blast holes for the mid-shift blast. They then had their meal break. When they went back to their workplace, they again barred down loose rocks and drilled eight (8) more blast holes for the last round of blast. While waiting for the time to ignite their round, one of his co-workers shouted to prepare the explosives for blasting, prompting private respondent to run to the adjacent panels and warn the other miners. Thereafter, he decided to take a bath and proceeded at [sic] the bathing station where four (4) of his co-workers

were also present. Before he could join them, he heard a voice at his back and saw Security Guard (SG) Larry Bulwayan instructing his companion SG Dale Papsa-ao to frisk him. As private respondent was removing his boots, SG Bulwayan forcibly pulled his skullguard from his head causing it to fall down [sic] to the ground including its harness and his detergent soap which was inserted in the skullguard harness. A few minutes later, private respondent saw SG Bulwayan [pick] up a wrapped object at the bathing station and gave it to his companion. SGs Bulwayan and Papsa-ao invited the private respondent to go with them at the investigation office to answer questions regarding the wrapped object. He was then charged with "highgrading" or the act of concealing, possessing or unauthorized extraction of highgrade material/ore without proper authority. Private respondent vehemently denied the charge. Consequently, he was dismissed from his work.

Private respondent claimed that his dismissal from work was without just or authorized cause since petitioners failed to prove by ample and sufficient evidence that he stole gold bearing highgrade ores from the company premises. If private respondent was really placing a wrapped object inside his boots, he should have been sitting or bending down to insert the same, instead of just standing on a muckpile as alleged by petitioners. Moreover, it is beyond imagination that a person, knowing fully well that he was being chased for allegedly placing wrapped ore inside his boots, will transfer it to his skullguard. The tendency in such situation is to throw the object away. As such, private respondent prayed that petitioners be held liable for illegal dismissal, to reinstate him to his former position without loss of seniority rights and benefits, and to pay his full backwages, damages and attorney's fees.

For their defense, petitioners averred that SG Bulwayan saw private respondent standing on a muckpile and inserting a wrapped object inside his right rubber boot. SG Bulwayan immediately ran towards private respondent, but the latter ran away to escape. He tried to chase private respondent but failed to capture him. Thereafter, while SG Bulwayan was on his way to see his co-guard SG Papsa-ao, he saw private respondent moving out of a stope. He then shouted at SG Papsa-ao to intercept him. When private respondent was apprehended, SG Bulwayan ordered him to remove his skullguard for inspection and saw a wrapped object placed inside the helmet. SG Bulwayan grabbed it, but the harness of the skullguard was also detached causing the object to fall on the ground. Immediately, SG Bulwayan recovered and inspected the same which turned out to be pieces of stone ores. Private respondent and the stone ores were later turned over to the Mankayan Philippine National Police where he was given a written notice of the charge against him. On January 9, 2008, a hearing was held where private respondent, together with the officers of his union as well as the apprehending guards appeared. On February 4, 2008, private respondent received a copy of the resolution of the company informing him of his dismissal from employment due to breach of trust and confidence and the act of highgrading.<sup>[2]</sup>

## **THE LABOR ARBITER'S RULING THAT PETITIONER LCMC IS LIABLE FOR ILLEGAL DISMISSAL**

On 30 September 2008, the labor arbiter rendered a Decision holding petitioner and its CEO liable for illegal dismissal and ordering them to pay respondent Icao P345,879.45, representing his full backwages and separation pay.<sup>[3]</sup> The alleged highgrading attributed by LCMC's security guards was found to have been fabricated; consequently, there was no just cause for the dismissal of respondent. The labor arbiter concluded that the claim of the security guards that Icao had inserted ores in his boots while in a standing position was not in accord with normal human physiological functioning.<sup>[4]</sup>

The labor arbiter also noted that it was inconsistent with normal human behavior for a man, who knew that he was being chased for allegedly placing wrapped ore inside his boots, to then transfer the ore to his skullguard, where it could be found once he was apprehended.<sup>[5]</sup> To further support the improbability of the allegation of highgrading, the labor arbiter noted that throughout the 21 years of service of Icao to LCMC, he had never been accused of or penalized for highgrading or any other infraction involving moral turpitude — until this alleged incident.<sup>[6]</sup>

## **THE NLRC ORDER DISMISSING THE APPEAL OF PETITIONER LCMC FOR FAILURE TO POST THE APPEAL BOND**

On 8 December 2008, petitioner and its CEO filed an Appearance with Memorandum of Appeal<sup>[7]</sup> before the NLRC. Instead of posting the required appeal bond in the form of a cash bond or a surety bond in an amount equivalent to the monetary award of P345,879.45 adjudged in favor of Icao, they filed a Consolidated Motion For Release Of Cash Bond And To Apply Bond Subject For Release As Payment For Appeal Bond (Consolidated Motion).<sup>[8]</sup> They requested therein that the NLRC release the cash bond of P401,610.84, which they had posted in the separate case *Dangiw Siggao v. LCMC*,<sup>[9]</sup> and apply that same cash bond to their present appeal bond liability. They reasoned that since this Court had already decided *Dangiw Siggao* in their favor, and that the ruling therein had become final and executory, the cash bond posted therein could now be released.<sup>[10]</sup> They also cited financial difficulty as a reason for resorting to this course of action and prayed that, in the interest of justice, the motion be granted.

In its Order dated 27 February 2009, the NLRC First Division dismissed the appeal of petitioner and the latter's CEO for non-perfection.<sup>[11]</sup> It found that they had failed to post the required appeal bond equivalent to the monetary award of P345,879.45. It explained that their Consolidated Motion for the release of the cash bond in another case (*Dangiw Siggao*), for the purpose of applying the same bond to the appealed case before it, could not be considered as compliance with the requirement to post the required appeal bond. Consequently, it declared the labor arbiter's Decision to be final and executory. The pertinent portions of the assailed Order are quoted below:

The rules are clear. Appeals from decision involving a monetary award maybe [sic] perfected only upon posting of a cash or surety-bond within the ten (10) day reglementary period for filing an appeal. Failure to file and post the required appeal bond within the said period results in the appeal not being perfected and the appealed judgment becomes final and executory. Thus, the Commission loses authority to entertain or act on the appeal much less reverse the decision of the Labor Arbiter (*Gaudia vs. NLRC*, 318 SCRA 439).

**In this case, respondents failed to post the required appeal bond equivalent to the monetary award of P345,879.45. The Consolidated Motion for Release of Cash Bond (posted as appeal bond in another case) with prayer to apply the bond to be released as appeal bond may not be considered as compliance with the jurisdictional requirement, as the application or posting is subject to the condition that the cash bond would be released. Besides, even if the motion for release is approved, the ten (10) day period has long expired, rendering the statutory right to appeal forever lost.**

WHEREFORE, respondents' appeal is hereby DISMISSED for non-perfection and the questioned decision is declared as having become final and executory. Let the Motion for Release of Cash bond be forwarded to the Third Division, this Commission, for appropriate action.

SO ORDERED.<sup>[12]</sup> (Emphasis supplied)

Petitioner and its CEO filed a Motion for Reconsideration. They emphasized therein that they had tried to comply in good faith with the requisite appeal bond by trying to produce a cash bond anew and also to procure a new surety bond. However, after canvassing several bonding companies, the costs have proved to be prohibitive.<sup>[13]</sup> Hence, they resorted to using the cash bond they posted in *Dangiw Siggao* because the bond was now free, unencumbered and could rightfully be withdrawn and used by them.<sup>[14]</sup> Their motion was denied in a Resolution dated 27 November 2009. Hence, they filed a Petition for Certiorari with the CA.

### **THE CA RULING AFFIRMING THE ORDER OF THE NLRC**

On 27 September 2010, the CA issued its assailed Decision<sup>[15]</sup> affirming the Order of the NLRC First Division, which had dismissed the appeal of petitioner and the latter's CEO. According to the CA, they failed to comply with the requirements of law and consequently lost the right to appeal.<sup>[16]</sup>

The CA explained that under Article 223 of the Labor Code, an appeal from the labor arbiter's Decision must be filed within 10 calendar days from receipt of the decision. In case of a judgment involving a monetary award, the posting of a cash or surety bond in an amount equivalent to the monetary award is mandatory for the perfection of an appeal. In the instant case, the CA found that petitioner and its CEO did not pay the appeal fees and the required appeal bond equivalent to

P345,879.45. Instead, it filed a Consolidated Motion praying that the cash bond it had previously posted in another labor case be released and applied to the present one. According to the CA, this arrangement is not allowed under the rules of procedure of the NLRC.<sup>[17]</sup>

Furthermore, the CA said that since the payment of appeal fees and the posting of an appeal bond are indispensable jurisdictional requirements, noncompliance with them resulted in petitioner's failure to perfect its appeal. Consequently, the labor arbiter's Decision became final and executory and, hence, binding upon the appellate court.<sup>[18]</sup>

Nevertheless, the CA ruled that the CEO of petitioner LCMC should be dropped as a party to this case.<sup>[19]</sup> No specific act was alleged in private respondent's pleadings to show that he had a hand in Icao's illegal dismissal; much less, that he acted in bad faith. In fact, the labor arbiter did not cite any factual or legal basis in its Decision that would render the CEO liable to respondent. The rule is that in the absence of bad faith, an officer of a corporation cannot be made personally liable for corporate liabilities.

### **THE ISSUE**

The sole issue before the Court is whether or not petitioner complied with the appeal bond requirement under the Labor Code and the NLRC Rules by filing a Consolidated Motion to release the cash bond it posted in another case, which had been decided with finality in its favor, with a view to applying the same cash bond to the present case.

### **Our Ruling**

The Petition is *meritorious*. The Court finds that petitioner substantially complied with the appeal bond requirement.

Before discussing its ruling, however, the Court finds it necessary to emphasize the well-entrenched doctrine that an appeal is not a matter of right, but is a mere statutory privilege. It may be availed of only in the manner provided by law and the rules. Thus, a party who seeks to exercise the right to appeal must comply with the requirements of the rules; otherwise, the privilege is lost.<sup>[20]</sup>

In appeals from any decision or order of the labor arbiter, the posting of an appeal bond is required under Article 223 of the Labor Code, which reads:

Article 223. APPEAL. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

x x x x

**In case of a judgment involving a monetary award, an appeal by**